IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 5328 of 1994

Date of Decision: December 13, 2006

Usha Ohri

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. Gurnam Singh, Advocate
for the petitioner.

Mr. Pawan Sharda, AAG, Punjab,
for the respondents.

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M.M.S. BEDI, J.

The petitioner joined the office of Director, Department of Tourism- respondent No.2 on adhoc basis from March 24, 1973 and was prematurely retired on July 18, 2002, during the pendency of this writ petition. The petitioner has invoked the writ jurisdiction of this Court for multiple reliefs seeking (i) counting of adhoc service for the purposes of

seniority, promotion and other service benefits etc; (ii) for consideration of promotion w.e.f. November 10, 1982 as Reception Officer, the date from which respondent No.3 was promoted; (iii) quashing of the promotion of respondent No.3 being junior to the petitioner as Clerks it tentamounts to 100% reservation.

Briefly stated, the case of the petitioner, as pleaded in the writ petition, is that the petitioner was appointed as Guide-cum-Clerk on March 24, 1976 on adhoc basis. Her services were terminated on September 20, 1978. The termination order was set aside by the competent authority on October 17, 1979 and petitioner was regularly appointed on the post of Guide-cum-Clerk w.e.f. April 1, 1977. The petitioner, as per the joint seniority list of Clerks (annexure P-5) figures at Sr. No. 7 whereas the name of respondent No.3 figures at Sr. No.17 thereof. The petitioner and respondent No.3 were given the senior scale of Clerks in the category of 50% Clerks of Department of Tourism, as per order of the Director, Department of Tourism dated May 24, 1982. The petitioner claims that in the year 1982, two posts of Reception Officer/ Assistant in the office of Head office of Department of Tourism fell vacant. Out of the said two vacancies one vacancy had fallen vacant on account of promotion of Mr.A.N. Atri, as Tourist Officer. This vacancy was meant to be filled by a candidate belonging to general category from amongst Guide-cum-Clerk/ Clerks. On account of existence of joint seniority list of Clerks/ Guide-cum-Clerk, the post of Reception Officer or Assistant could be filled by promotion from either of the said two categories. It is averred in the writ

petition that one Narinder Singh, Clerk, who was admittedly senior to the petitioner was promoted to the post of Assistant against the vacancy meant for Scheduled Caste candidate. The second vacancy of Reception Officer was filled by respondent No.3, who is also member of Scheduled Caste. The petitioner was not considered for extraneous considerations for the post of Reception Officer. The above said act of the respondents tentamounts to 100% reservation, so far as the promotion to the higher post in the cadre of Assistant/ Reception Officer is concerned. The services of the petitioner were governed by draft Rules known as Punjab State, Department of Tourism (Class III) Staff Rules, (for short 'the Rules'). Rule 8 of the Rules provided that appointments to the services are to be made 25% by direct recruitment and 75% by promotion. Respondent No.4- Rajiv Singh was appointed as Reception Officer through direct recruitment, despite the fact that candidates by way of promotion were available. It is claimed by the petitioner that respondent No.4 was not eligible for the post of Reception Officer as he did not possess the requisite qualifications at the time of his appointment. Appointment of respondent No.4 is alleged to be in contravention to Rule 8 of the said Rules, as the vacancy by direct recruitment could be filled only if suitable candidate was not available by promotion. It is pleaded in the writ petition that there was an adverse entry made in her ACR for the year 1985-86. The petitioner had filed a detailed representation to the competent authority for expunging said entry on January 23, 1987. The representation was allowed after more than a period of 3 months which was in contravention to the Government instructions

regarding expeditious finalisation of the service matters of Government employees. Petitioner claims that in the year 1991, departmental proceedings initiated against her were prolonged for more than three years with sole objective to deny the right of consideration for promotion to the higher post.

On issuance of notice of motion, the respondents have filed separate written statements taking up the plea that the promotion of respondent No.3 on November 10, 1982 on the basis of reservation against reserve roster point cannot be challenged at belated stage. The petitioner had been promoted as Reception Officer on April 29, 1988 and her retrospective promotion has been sought by filing a writ petition in the year 1995. Respondents No.1 and 2 in their written statement have highlighted that there were serious complaints against the petitioner on account of which her services were terminated while she was on adhoc basis. The petitioner has already been given the benefit of adhoc service as permissible but the adhoc service towards seniority cannot be counted as per the settled law. It is admitted that in the year 1982, two posts of Reception Officer fell vacant. It is also admitted that there is a joint seniority of Clerks/ Guide-cum-Clerk. There are five posts in the cadre of Reception Officer out of which one was to be filled up from amongst candidates belonging to Scheduled Castes. Mr.Narinder Singh, Guide-cum-Clerk, who was senior to the petitioner and was member of Scheduled Castes category had waived his promotion as Reception Officer. Respondent No.3 who belongs to the Scheduled Castes category but was junior to the petitioner was promoted

against the reserved vacancy, according to the Government instructions. Mr. Narinder Singh, who belonged to the Scheduled Castes category was promoted as Assistant on February 19, 1986 after he qualified for the written test of Assistant Grade Examination and was only eligible candidate to be promoted as such. It has been clarified that only one vacancy was filled from amongst the Scheduled Castes category. The case of the petitioner for promotion to the post of Reception Officer was duly considered from time to time but she was not found fit for promotion on the basis of her service record. The applicability of draft service Rules has been admitted but it has been clarified that the appendix 'B' referred to by the petitioner only relates to the posts of Superintendents and Assistants and not to the posts of Reception Officer. The direct appointment of respondent No.4 as Reception Officer was challenged by some other eligible Clerk/ Guide-cum-Clerks of the Department in Civil Writ Petition No. 6228 of 1986 but the said writ petition was dismissed by the Court as such the petitioner has got no locus standi to challenge the said appointment of respondent No.4. The adverse entry in the ACR of petitioner for the year 1985-86 was expunged. Delay, as alleged, in consideration of representation of the petitioner against adverse remarks, has been denied. Pendency of enquiry against the petitioner is admitted. However, it has been clarified that the delay is only on account of the fact that the enquiry report has been misplaced from the office and the official responsible has been suspended, on account of file being untraceable. The allegations of malafide alleged against respondent No.5 have been denied. Respondent

No.3 has filed a separate written statement and has reiterated the averments made in the written statement of respondents No.1 and 2. Respondent No.3 claimed that she had been promoted to the post of Reception Officer against one reserved vacancy out of the two vacancies existing. So far Narinder Singh is concerned, who though senior to respondent No.3, had given up her promotion, as a result of which respondent No.3 was promoted to the post of Reception Officer. But Mr. Narinder Singh qualified his Assistant Grade Examination and was promoted to the post of Assistant on February 19, 1986, on the basis of his own merit and seniority. It has been denied that respondent No.3 and Narinder Singh both were promoted from Scheduled Castes quota against only one post of aforesaid two posts of Reception Officer.

Mr. Gurnam Singh, learned counsel for the petitioner has submitted that the sole grievance of the petitioner which survives for adjudication, at this stage, is that the petitioner should have been considered and granted promotion w.e.f. November 10, 1982, instead of April 29, 1988 because respondent No.3, who was promoted as Reception Officer on November 10, 1982 did not deserve to hold the said post of Reception Officer as it resulted in filling up the promotion post by granting 100% reservation. He relied upon the ratio of the rulings in the case of **Dr. Raj Kumar v. Gulbarga University**, 1991 (1) RSJ 341, in which it has been held that reservation more than 50% is not permissible and the filling up of the posts to the extent of 100% is violative of Articles 14 and 16 of the Constitution of India. On the other hand, learned State counsel contended

that the petitioner had been considered for promotion as and when the action arose but on account of her service record she, on consideration was not found fit for promotion. The allegation of filling up the posts of Reception Officer/ Assistant by providing 100% reservation was vehemently denied. It was contended that the petitioner has misinterpreted the factual position, as respondent No.3 had been appointed against reserve point and Narinder Singh who was senior to the petitioner as well as respondent No.3 on his own merit had been appointed as Assistant. Respondent No.3 occupied one of the posts of the Reception Officer and it is not a case of 100% reservation, as alleged.

I have heard the learned counsel for the petitioner, as well as learned counsel for the respondents and gone through the documents placed on the record. So far as the relief of counting of adhoc service of the petitioner from March 24, 1976 to March 30, 1977 towards regular service for the purpose of promotion and seniority is concerned, the same is not permissible, but the said service could certainly be counted towards the length of service for the purpose of retrial benefits. It is averred in the written statement that except for the benefit towards seniority, the advantage of adhoc service rendered by the petitioner has already been granted to her. Original record was summoned. The concerned official from the Department had informed that the petitioner has challenged her premature retirement on July 18, 2002 in a Civil Court at Amritsar and the original record stands produced there. But the Court has been apprised of the order dated July 18, 2002, indicating that after completion of 26 years of

qualifying service, the petitioner has been retired as Reception Officer under the Punjab Civil Service (Premature Retirement) Rules, 1975. I have also considered the service record of the petitioner for the post of Reception Officer w.e.f. 1982. The gist of the service record for the relevant period prior to the promotion of the petitioner as Reception Officer is as follows:-

S.No.	Year	Remarks
1.	1977-78	The enquiry is pending against the petitioner for snatching money from Class IV employee.
2.	1978-79	Not available as the services of the petitioner have been terminated.
3.	1979-80	Not available. Average.
4.	1980-81	Not available. Average.
5.	1981-82	Average. The official is under suspension because enquiry is pending.
6.	1982-83	Average. The employee does not care for her work.
7.	1983-84	Good
8.	1984-85	Below average on account of reason that the employee seeks the recommendation of higher officers leaving the immediate senior officers.

It is admitted fact that the petitioner had been promoted as Reception Officer in the year 1988. The writ petition had been field by her in the year 1994 seeking promotion with retrospective affect. She has

approached the Court after a lapse of about 7 years. There is no force in the plea of the petitioner that there has been 100% reservation for the purpose of promotion as is apparently clear, that in the year 1982 two posts of Reception Officers/ Assistants were to be filled from amongst the candidates belonging to general category as well as from amongst the reserved category. Mr. Narinder Singh, Clerk was admittedly senior to the petitioner as well as respondent No.3. He had foregone his promotion to the post of Reception Officer, which was required to be filled from amongst the Scheduled Castes candidates. Respondent No.3 being the next Scheduled Caste candidate, junior to the petitioner was appointed against the reserved post. So far as Mr. Narinder Singh is concerned, no doubt, he has been a Scheduled Caste candidate but he had qualified the written test of Assistant Grade Examination and was only eligible candidate to be promoted as such, was actually promoted. The case of the petitioner for her promotion to the post of Reception Officer was considered and she was not found fit for promotion on the basis of her service record. There is no dispute regarding the proposition of law that there cannot be 100% reservation for the purpose of promotion for a higher post, but in the present case, the facts indicate that there has not been any violation of the law against 100% reservation. The claim of the petitioner for retrospective promotion is barred by time and her writ petition suffers from delay and laches, as has been held by the Hon'ble Supreme Court in the matter of **State of M.P. v. Bhai Lal Bhai**, AIR 1966 SC 1006.

In view of the above discussion, there does not appear to be any merit in the writ petition and the same is accordingly dismissed. However, nothing said in the above said order will prejudice the right of the petitioner in her civil suit stated to be pending before the Lower Court challenging her premature retirement, which will be decided on its independent merits.

December 13, 2006 (M.M.S.BEDI)
sanjay JUDGE